

DIVISION II: CIVIL CASES

CHAPTER 4 – GENERAL POLICIES AND PROCEDURES

RULE 4.0 STATEMENT OF PURPOSE

California Rules of Court, Rules 200 through 298, provide a comprehensive set of rules and procedures for the filing and service of pleadings, and management, calendaring, and trial of all general civil cases. Counsel and self-represented parties are directed to these rules which, while not repeated here, are applicable to all trial courts in the state. (*Effective 5/19/98; Amended 7/1/02*)

RULE 4.1 SCOPE AND POLICY

1. This chapter applies to all unlimited and limited civil cases filed in this Court, except: Probate; Guardianship; Conservatorship; Family Law (including proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act; freedom from parental custody and control proceedings; and adoption proceedings); Juvenile Court proceedings; Small Claims proceedings; Unlawful Detainer proceedings; and Other Civil Petitions.

2. It is the policy of this Court:

A. To encourage all parties to all civil cases to pursue settlement and/or alternative dispute resolution (hereafter “ADR”) at the earliest possible opportunity. ADR information is available to the plaintiff(s) at the time of filing of the complaint. Appropriate ADR procedures shall be considered in all civil cases before scheduling any matter for trial. Settlement conferences pursuant to California Rules of Court, Rule 222 may be set at any time to promote early settlement and disposition.

B. To maintain the civil case disposition goals required by California Rules of Court, Rule 209 and set forth in Rule 4.2(a)(1) *infra*. Continuances or extensions of time of any trial date, case management conference date, or any other date scheduled by the Court, including any Law and Motion hearing date scheduled pursuant to Chapter 5, *infra*, may be granted only with consent of the Court, for good cause shown. The Court may require that any request for continuance or extension of time be made by appropriately noticed *ex parte* application or motion. Stipulations for continuance or extension of time, standing alone, shall have no force or effect, unless approved by the Court.

C. To utilize any procedure, consistent with the Court’s statement of purpose regarding active case management, to reduce the costs of litigation, and to ensure timely disposition of all civil cases. Nothing in this chapter shall prevent a judge, in an individual case, from issuing an order modifying the routine processes prescribed by this chapter.

(*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 4.0, 7/1/02*)

RULE 4.2 CASE FILING AND DESIGNATION

1. Case Filing

A. The first paper filed with the court in all civil cases subject to this chapter shall be accompanied by the most recent version of the Judicial Council's Civil Case Cover Sheet (Judicial Council Form 982.2(b)(1)).

B. In addition to the Judicial Council's Civil Case Cover Sheet, an Addendum to the Civil Case Cover Sheet (See Appendix to Chapters 4 and 5 of the local rules, Section E., for Addendum Form) shall accompany the first paper filed in all civil cases subject to this chapter.

C. Failure to submit the required Judicial Council Civil Case Cover Sheet and the Addendum with the first paper may result in sanctions unless the completed forms are filed within fifteen (15) calendar days of the date of filing the first paper.

2. Case Designation

A. Unlimited and Limited Civil Cases. Case types designated on the Judicial Council Cover Sheet and Addendum in all civil cases subject to this chapter shall be processed in accordance with these rules.

B. Uninsured Motorist. At the time the complaint is filed, or within 10 days after discovering the case is an Uninsured or Underinsured Motorist case, plaintiff shall file an ex parte application requesting that the case be designated as Uninsured or Underinsured Motorist case. The application shall be accompanied by a declaration under penalty of perjury and signed by counsel, or, if unrepresented, by the unrepresented plaintiff(s), stating that:

(1) plaintiff knows or has good reason to believe the defendant(s) is uninsured, or underinsured including a brief factual statement regarding the sources of that knowledge or belief, and

(2) the claim is subject to an arbitration provision of an insurance policy which applies to all or part of the loss claimed by plaintiff(s).

C. Complex Civil Litigation Designation. All cases provisionally designated as complex pursuant to California Rules of Court, Rule 1800 et seq., are assigned to Department 22 for a complex determination hearing. See Appendix to Chapters 4 and 5, Section E., for Complex Civil Litigation case management and scheduling procedures. The Court on its own motion, or on noticed motion of any party, after an answer has been filed, may order a case re-designated in the appropriate case management department or appropriate law and motion department if the case has not yet been assigned to a case management department.

3. Notice of Death of Plaintiff. Within ten (10) calendar days of receiving Notice of Death of Plaintiff, counsel for plaintiff shall file in the Case Management department and serve upon all other parties of record in the action, a Notice of Death of Plaintiff. Upon receipt of the Notice of Death of Plaintiff, the Court shall suspend future consideration of the case for a period of

ninety (90) calendar days. The case shall be placed on a dismissal calendar ninety (90) calendar days after the Notice of Death of Plaintiff is filed unless:

- A. The original case is consolidated with a new wrongful death action or;
- B. Good cause is shown upon written noticed motion to extend the time for dismissal or;
- C. Plaintiff's counsel moves to have the original action restored to active status.

(Effective 5/19/98; Amended 7/1/99 and 8/1/00; Amended and renumbered from Rule 4.1, 7/1/02)

RULE 4.3 CASE MANAGEMENT

1. Civil Case Management Plans

A. Case Management Plan Assignment. In accordance with California Rules of Court, Rule 209, all civil cases subject to this chapter shall be assigned to one of the following case management plans:

(1) Plan 1. The goal is disposition of the case within 12 months from the date of filing of the complaint.

(2) Plan 2. The goal is disposition of the case within 18 months from the date of filing of the complaint.

(3) Plan 3. The goal is disposition of the case within 24 months from the date of filing of the complaint.

(4) Plan 4. Pursuant to California Rules of Court, Rule 209(e), all uncomplicated civil cases shall be assigned to Plan 4. The goal of the Plan 4 assignment is disposition of the case within 6 to 9 months from the date of filing of the complaint. Cases assigned to Plan 4 include:

- a. Collections.
- b. Employment – Labor Commissioner Award Confirmation.
- c. Employment – Labor Commissioner Award Appeal.
- d. Enforcement of Judgment.
- e. Judicial Review – Asset Forfeiture.
- f. Judicial Review – Petition Re: Arbitration Award.

(5) Exempt Cases. In accordance with California Rules of Court, Rule 214, the Court, on its own motion, or upon stipulation of the parties, may order that any short cause civil case (in which the time estimated for trial is 5 hours or less) is exempt from the requirements of case management review, and set the case for trial.

2. Procedures for Assignment and Reassignment to a Case Management Plan

A. Assignment of Cases: Upon filing, all cases shall be assigned to Plan 1 or Plan 4. All cases will remain in Plan 1 or Plan 4 unless a request for reassignment is made pursuant to Rule 4.3(2)(B).

B. Reassignment: A case may be reassigned from Plan 1 or Plan 4, or be deemed exempt, by the case management judge assigned to the review of the matter as follows:

(1) Reassignment Procedure: Within 90 days of a party's first appearance in the action, such party desiring reassignment to a different case management plan or seeking exempt status shall file and serve a request establishing good cause for reassignment. Requests submitted after the 90-day period, in addition to establishing good cause for reassignment, shall also establish good cause for the delay in submission. All requests shall be accompanied by a proposed order and proof of service and shall be filed with the Clerk's Office.

(2) Reassignment Factors: All such written requests shall include a discussion of all of the relevant factors set forth in California Rules of Court, Rule 210. In addition, the request shall indicate the length of time the requesting party believes will be needed for prompt disposition of the case.

(3) Joining or Opposing Reassignment: Any party may, within 10 days of the service of such request, file and serve a joinder in, or opposition to, such request for reassignment or exemption, accompanied by a proof of service. In opposing reassignment or exemption, the opposing party shall include a discussion of all of the relevant factors set forth in California Rules of Court, Rule 210, specify the length of time that party believes will be needed for prompt disposition of the case, and set forth why the original or some other assignment is the most appropriate means for achieving a timely, expeditious and just resolution of the matter.

(4) Reassignment Ruling: Unless otherwise ordered by the Court, no hearing will be conducted on a reassignment request. The case management judge assigned to the matter shall notify the requesting party of the Court's ruling on the request. The requesting party shall notify all other parties by serving a Notice of Ruling within five (5) days of receipt of the Court's ruling on the request.

3. Contractual Arbitration

A. Petition to Compel Contractual Arbitration: In any case, other than an Uninsured or Underinsured Motorist Case, subject to a written agreement to arbitrate the entire controversy, which is the subject matter of the lawsuit:

(1) The parties to the action may stipulate, by notice filed in the case management department or in the appropriate law and motion department if the case has not yet been assigned to a case management department, to a court order pursuant to Code of Civil Procedure section 1281.2 in lieu of filing an answer to the complaint, or,

(2) A defendant or cross-defendant may file a petition in the case management department, or in the appropriate law and motion department if the case has not yet been

assigned to a case management department, pursuant to Code of Civil Procedure section 1281.2 in lieu of filing an answer to the complaint.

In the event the petition to compel contractual arbitration is denied, the petitioning defendant or cross-defendant shall have 10 days after notice of said denial to file a response to the complaint. There shall be no extension of time to file a response to a petition except by order of the Court on proper application to the case management department, or appropriate law and motion department if the case has not yet been assigned to a case management department, for good cause shown.

B. Stay of Proceedings Pending Arbitration/Status: In all cases in which the Court orders the parties to arbitration pursuant to Code of Civil Procedure section 1281, further consideration of the case shall be stayed for a period ending on the first court date twelve (12) calendar months after the date the complaint was filed. Fifteen (15) days before the scheduled end of the stay, counsel and any un-represented party shall file a brief joint Status Report Re: Arbitration in the department that made the arbitration order. The purpose of the parties' joint status report is to determine whether the court-ordered stay should be extended and, if so, the appropriate length of the extended stay.

C. Disposition of Cases Submitted to Arbitration: In the event the arbitration agreement between the parties does not specify a date for the arbitration award, the Court, upon request by any party, will establish a deadline for entry of the award. In the event a case is settled or otherwise disposed of, plaintiff shall file written notice of the settlement or disposition with the Court and notify all parties, arbitrator, or other neutral involved in the case, and shall timely file a request for dismissal, in accordance with the procedures set forth in California Rules of Court, Rule 225(a), (b) and (c).

4. Case Management Review

A. Case Management Conference: Unless otherwise indicated by these rules, all civil cases shall be scheduled for an initial Case Management Conference in a designated department of the Court approximately 150 days after the filing of the complaint. For cases assigned to Plan 4, the Court may schedule an initial Case Management Conference approximately 120 days after the complaint is filed. The clerk will give notice of the Case Management Conference no later than 45 days prior to the Conference.

B. Continuance of Case Management Conference: It is the policy of the Court to hold the Case Management Conference on the date originally set. Continuances may be requested by ex parte application to the designated case management department no later than 30 days prior to the date of the conference. Such applications shall be supported by a declaration showing good cause why the conference should be continued. Requests for continuance of the initial Case Management Conference beyond the 180-day limit set forth in California Rules of Court, Rule 212 will not be entertained.

C. Preparation for Conference and Parties' Obligation to Meet and Confer: At the Case Management Conference, counsel for each party and each self-represented party shall appear personally or, if permitted by California Rules of Court, Rule 298(c)(2), by telephone.

Counsel and self-represented parties shall be prepared to discuss and commit the party's position on each of the subjects set forth in California Rules of Court, Rule 212(e). Unless the Court orders another time period, no later than 30 days before the date of the conference, counsel and self-represented parties shall meet and confer to discuss each party's position on the issues and subject matters set forth in California Rules of Court, Rules 212(e) and 212(f). Except as set forth in Rule 4.3(4)(D), *infra*, a party's appearance at the conference may be excused only by prior Court order issued in accordance with California Rules of Court, Rule 212(b).

D. Limited Jurisdiction Civil Cases: Attendance Required Except Plan 4 Cases or as Ordered by Court. Counsel for each party and each self-represented party in any limited jurisdiction civil case pending before the Court shall attend, either in person or by telephone, a case management conference scheduled in accordance with these rules, except no appearance is required in any Plan 4 case or by order of the Court.

5. Procedures Applicable to Exempt Cases

Upon designation of a case as exempt from case management review under Rule 4.3(1)(5), the Court shall schedule a conference for a date approximately 120 days from the date of filing of the complaint. At this conference, the Court shall set a trial date, and may also consider any of the following orders:

- (1) establishing a schedule and appropriate limits for conduct of discovery;
- (2) establishing a schedule for the filing of anticipated motions;
- (3) referring the case to an appropriate ADR or settlement program;
- (4) establishing procedures to be followed at trial;
- (5) scheduling one or more status conferences to consider unresolved issues;
- (6) any other action that will facilitate a just and expeditious resolution of the

case.

(Effective 5/19/98; Amended 7/1/99 and 8/1/00; Amended and renumbered from Rule 4.2, 7/1/02)

RULE 4.4 AUTHORITY OF CASE MANAGEMENT JUDGE

In addition to the duties and responsibilities expressly set forth in these rules and California Rules of Court, Rule 208 through 210, and 212, the assigned case management judge shall have the following authority:

A. Submission of Pleadings or Written Legal Argument: In the discretion of the case management judge, counsel and self-represented parties may be required to provide legal memoranda regarding factual and legal issues.

B. Settlement: The case management judge may determine whether an early settlement conference should be scheduled and, if so, on what date. The judge shall set forth in the case management order all persons – including counsel, parties, adjusters, corporate officers, or other persons with authority to negotiate and enter into a settlement in good faith – who are required to attend the early settlement conference, or may excuse any such attendance as appropriate. At any case management conference in which settlement is discussed, each plaintiff or party seeking affirmative relief or recovery shall be prepared to make a minimum demand, and each

defendant shall come to the conference prepared to make his or her highest offer. Counsel attending any case management conference at which settlement is to be discussed shall be thoroughly familiar with the case. To promote early settlement, all attorneys or self-represented parties ordered to attend the early settlement conference shall participate in a good faith attempt to settle the case or stipulate to as many facts or issues as possible. Any counsel or party ordered to attend a settlement conference who fails to so attend, or who attends but fails to participate in the conference in good faith, may be subject to sanctions, as appropriate, in the amount of court costs, actual expenses, and attorneys' fees incurred in preparing for and attending the settlement conference.

C. Referral to Referee or Special Master: At the request of the parties pursuant to Code of Civil Procedure section 638, or upon a party's or the Court's own motion pursuant to Code of Civil Procedure section 639, the case management judge may appoint a referee for settlement, disposition, or for any other purpose as permitted by statute. All orders of reference made pursuant to this section shall be by a written order that complies in all respects with the rules and procedures set forth in California Rules of Court, Rules 244.1 and 244.2, and Code of Civil Procedure sections 638 through 645.1.

D. Judicial or Contractual Arbitration and ADR: At the request of counsel or any self-represented party, or on his/her own motion pursuant to California Rules of Court, Rule 212, the case management judge may refer the case to judicial or contractual arbitration, or to some other ADR process, and may set the date by which arbitration or ADR process shall be completed and an award filed with the Court.

E. Discovery: At the request of counsel or any self-represented party, or on his/her own motion, the case management judge may issue orders scheduling, requiring, opening, or limiting discovery, as necessary, to assist settlement and/or trial readiness of the case. In addition, as may be necessary to assist settlement and/or prepare the case for trial, the case management judge may:

- (1) order and supervise a plan for discovery;
- (2) regulate the timing, scope, issues and deadlines for completing discovery;
- (3) schedule depositions of parties, witnesses, or experts;
- (4) issue orders relating to the scheduling, designation, and exchange of expert witness information under Code of Civil Procedure section 2034; and
- (5) make appropriate orders limiting the number of experts called at trial in any case.

F. Law and Motion:

(1) **Law and Motion Proceedings:** Except as required by statute, the case management judge may schedule the date(s) by which law and motion proceedings in the case shall be completed, and may hear and determine all law and motion matters in the case, including discovery proceedings, which would ordinarily be filed in the law and motion department pursuant to Chapter 5 of these rules, *infra*, if the parties so stipulate and the case management judge so agrees. Absent a written stipulation of the parties and the consent of the case management judge, and except as set forth below, all law and motion matters shall be filed

in the appropriate law and motion department in accordance with the procedures set forth in Chapter 5 of these rules.

(2) **Authority to Hear and Determine Specified Motions:** The case management judge shall hear and decide the following law and motion matters in cases assigned to that case management department:

- (a) Motions to set, advance, continue or vacate a trial date;
- (b) Motions to continue any Case Management Conference date, arbitration completion date or ADR completion date;
- (c) Motions to Reclassify;
- (d) Motions to compel enforcement of settlement agreement, motions to confirm good faith settlement, and motions or petitions to approve settlement on behalf of a minor or incompetent person;
- (e) Motions to contest a good faith settlement agreement;
- (f) Motions to consolidate (for all or limited purposes), bifurcate or sever actions, issues or causes of action;
- (g) Motions to limit the number of expert witnesses and motions to reopen discovery;
- (h) Motions to compel contractual arbitration pursuant to Code of Civil Procedure section 1281.2.

G. Mandatory Settlement Conference: In its discretion, or at the request of any party, the case management judge may set a mandatory settlement conference pursuant to California Rules of Court, Rule 222. The case management order setting the mandatory settlement conference shall specify the parties (counsel, parties, and persons with full authority to settle the case) who shall attend the conference, and shall direct that each party submit a mandatory settlement conference statement satisfying all requirements of California Rules of Court, Rule 222(c).

H. Standing Pre-Trial Orders For Civil Cases:

(1) Discovery completion and disclosure is governed by appropriate statutory provision unless otherwise agreed between the parties by written stipulation or further order of the court.

(2) Each counsel, and any self-represented party, shall prepare an index of all exhibits to be offered at trial, other than those to be used for impeachment or rebuttal, for submission in triplicate to the trial judge at the first appearance in the trial department. The index shall include a brief description of the exhibit. These indices shall be exchanged by counsel, and any self-represented party, at least three (3) court days before trial. Formal objections to exhibits shall be in the form of a Motion in Limine pursuant to paragraph (5).

(3) Originals of all depositions to be used at trial shall be lodged with the courtroom clerk at the first appearance in the trial department. Counsel, and any self-represented party, shall meet and confer to edit depositions as necessary and make a good faith effort to resolve admissibility issues related to depositions.

If depositions, requests for admissions, interrogatory responses, or any other discovery response, are to be used in lieu of live testimony at trial, the proponent shall submit the excerpts to be used to opposing counsel, or any self-represented party, at least three (3) court days before trial. Legal grounds for objections to such excerpts shall be raised by

Motion in Limine pursuant to paragraph (5) of this rule. Counsel and any self-represented party, are also ordered to comply with the provisions of CCP Section 2025(1) and (u) with respect to the anticipated use of videotaped depositions.

(4) The proponent shall prepare written transcripts of any video or audio presentations intended to be used at trial pursuant to CRC 203.5, which shall be submitted to opposing counsel, or any self-represented party, at least three (3) court days before trial. Objections to said video presentation and/or transcript shall be raised in a Motion in Limine pursuant to paragraph (5) of this Rule.

(5) ALL Motions in Limine shall be in writing and personally served upon opposing counsel or any self-represented party one (1) court day before trial, and filed with the courtroom clerk at the first appearance in the trial department.

Motions in Limine not served in compliance with this Rule may not be heard.

(6) A list of all witnesses (expert and non-expert) to be called at trial, other than those to be called solely for impeachment or in rebuttal, shall be personally served upon opposing counsel, or any self-represented party, three (3) court days before trial and presented in triplicate to the trial judge at the first appearance in the trial department.

Trial will not be delayed to accommodate witness scheduling problems. In the absence of extraordinary circumstances, a party will be deemed to have concluded the presentation of his/her case once the examination of available witnesses is concluded.

Witnesses not listed are subject to exclusion at trial.

(7) If medical records are involved, the parties are to delete any information which counsel, or any self-represented party, agree should not come into evidence, including insurance information, so that such information is not received by the jury. The proponent shall then prepare clean copies of the records for submission into evidence. Any disagreements or legal grounds for objection to said records shall be set forth in a Motion in Limine filed pursuant to paragraph (5) of this Rule.

(8) Each counsel, and any self-represented party, shall prepare a brief non-argumentative summary of the factual nature of the case and a brief statement regarding alleged injuries and/or damages for submission to the trial judge at the first appearance in the trial department. The purpose of the summary is to provide an overview of the case for the jury. Each counsel and any self-represented party shall also prepare a proposed form of jury instruction regarding the burden(s) of proof involved in the case. Copies of the summary and each party's proposed form of instruction shall be personally served upon opposing counsel, or any self-represented party, three (3) court days before trial and presented in triplicate to the trial judge at the first appearance in the trial department.

(9) Each counsel, and any self-represented party, shall personally serve upon opposing counsel, or any self-represented party, three (3) court days before trial and submit a set of proposed jury instructions to the trial judge at the first appearance in the trial department. The submission of a list of jury instructions is NOT acceptable. The full text of the proposed instructions must be provided. Any proposed instruction which is not taken verbatim from jury instructions approved by the Judicial Council of California shall include citations to the authorities upon which it is based.

(10) If the use of a special verdict form is anticipated, each counsel, and any self-represented party, shall prepare the form of special verdict, personally serve it upon opposing counsel, or any self-represented party, three (3) court days before trial and submit it to the trial judge at the first appearance in the trial department.

(11) Examination of prospective jurors shall be conducted pursuant to Code of Civil Procedure Section 222.5, California Rules of Court, Appendix, Division 1, Standards of Judicial Administration, Section 8, and California Rule of Court 228. Supplemental voir dire questions should be personally served upon opposing counsel or any self-represented party, three (3) court days before trial and submitted to the trial judge at the first appearance in the trial department.

(12) If this case involves technical or unusual vocabulary, a special glossary, in duplicate, shall be submitted to the courtroom clerk at the first appearance in the trial department.

I. Referral to Single Assignment Department: Upon the motion of any party, or on the Court's own motion, the case management judge may refer any case to the Presiding Judge for consideration of assignment of the case to a single judge, for all purposes, pursuant to California Rules of Court, Rule 213.

J. Sanctions and Orders to Show Cause: Upon the failure of any party, including the party's counsel, to comply with any provision of these rules, or the California Rules of Court, the case management judge shall have the authority to issue orders to show cause, and/or to impose monetary or any other appropriate sanctions to the extent permitted by statute or case law.

(Effective 5/19/98; Amended 7/1/99, 1/1/00, 7/1/02, and 1/1/04)

RULE 4.5 TRIAL SETTING

1. Trial Calendar

The trial calendar shall be maintained by the Presiding Judge or the designee of the Presiding Judge, and shall contain all civil cases in which a trial date has been assigned.

2. Continuances

No trial date shall be continued except upon an affirmative showing of good cause, such as serious accident, illness or death, or unanticipated unavailability of parties or witnesses. In all cases, motions to continue trial must be supported by affidavits or declarations detailing specific facts showing that a continuance is necessary. In addition to good cause, the Court may consider the following factors in determining whether to grant or deny the continuance:

(1) The time when the need for the continuance arose, and the diligence of counsel in bringing the need for a continuance to the attention of the Court and opposing counsel at the earliest possible date and in attempting to avoid a continuance;

(2) The proximity of the trial date, the age of the case, the established time limit for processing cases, and the nature of any previous continuances or prior orders entered in the case;

(3) The earliest possible date all parties and the Court will be ready to proceed;

(4) Whether the continuance may be avoided by the use of stipulations as to testimony; and

(5) The injury, inconvenience, or prejudice caused to the party not requesting the continuance.

3. Trial Continuance Procedures

Motions to continue trial must be made in writing, and shall be directed to the case management or single-assignment judge assigned to the case at least five (5) court days prior to trial.

No case shall go “off calendar” without a future action date being set. Failure of any party to appear on the trial date or any other scheduled event, after proper notice, may result in the case being dismissed, an order that the case proceed to trial without the party’s presence, or the imposition of monetary or other sanctions as permitted by statute or case law.

(Effective 5/19/98; Amended 7/1/99; Amended and renumbered from Rule 4.7, 7/1/02)

RULE 4.6 JURY TRIALS

1. Deposits:

In any civil case in which a jury trial is demanded, the jury fees shall be deposited with the Clerk in strict compliance with Code of Civil Procedure section 631 et seq.

The party demanding the jury shall deposit with the Clerk, the jury fee amount established and published in the Superior Court of California, County of Alameda Fee Schedule.

The party requesting a jury shall be responsible for advancing the costs of meals required by a jury during its deliberations.

2. In Limine Motions:

In limine motions directed to the trial judge in all cases on which a decision is sought at or before the commencement of presentation of evidence to the trier of fact, shall be filed in writing, supported by points and authorities. The Court shall not charge a fee for filing motions in limine.

3. Jury Instructions:

Proposed jury instructions shall be prepared and submitted by counsel in compliance with applicable statutes, rules and orders of the Court. Counsel shall refer to the specific page or pages containing the language relied upon in cases cited as authority for any proposed instruction.

(Effective 5/19/98; Amended 7/1/99, 7/1/99, and 1/1/01; Renumbered from Rule 4.8, 7/1/02)

RULE 4.7 BANKRUPTCY STAYS

Upon the filing of the appropriate notice or documentation pursuant to California Rules of Court, Rule 225(d) that a petition has been filed in the United States Bankruptcy Court (11 USC 362(a)) said action will be stayed and the case will be placed on a dismissal calendar set for twelve (12) months from the date of filing of the notice or documentation. At any time prior to dismissal, parties to the action may motion the appropriate Court to remove, extend or otherwise modify the stay status of the case.

1. Procedure For Cases Assigned to Case Management

If the action was assigned to a case management judge, the appropriate Court for any motion shall be the assigned case management department.

2. Procedure For Exempt and Unassigned Cases

If the stayed action was not previously assigned to a case management department, the appropriate Court for any motion shall be the Law and Motion department in the venue where filed. (*Effective 5/19/98; Amended 7/1/99; Amended and renumbered from Rule 4.9, 7/1/02*)

RULE 4.8 DEFAULT MATTERS

1. Clerk's Judgment: When Available

When default has been entered pursuant to Code of Civil Procedure section 585(a), a clerk's judgment may be requested for the following types of cases:

- A. Common counts, including account stated, goods sold and delivered or labor performed, open book account;
- B. Simple contracts (either unsecured or where complaint alleges security has not been repossessed), including retail installment contracts and installment accounts, credit card agreements, 30 day or one pay accounts, open end or revolving loan agreements; and
- C. Unlawful detainer - for restitution only, per Code of Civil Procedure section 1169.

No declaration is required for clerk's judgment, but the original documents must be submitted for cancellation per California Rules of Court, Rule 234. Otherwise, plaintiff must submit a declaration and order requesting that a copy be used as original.

2. Court Judgment

All cases other than those set forth in Rule 4.8(1) require a Court judgment. A Court judgment may be obtained by means of a civil uncontested hearing, or by submission of documents pursuant to California Rules of Court, Rule 388. However, once a plaintiff has requested a Court judgment under California Rules of Court, Rule 388, a civil uncontested hearing shall not be set without a Court order.

A request for Court judgment under California Rules of Court, Rule 388 must be accompanied by Code of Civil Procedure section 585(d) declaration(s) in lieu of personal testimony and any other properly authenticated proof required to establish both liability and damages as follows:

- (a) Facts must be set forth with particularity;
- (b) Declaration must include a statement that the person who signs it, if sworn as a witness, can testify competently to the facts stated in the declaration;
- (c) Facts stated must be within the personal knowledge of the declarant. The following usually do not meet the personal knowledge requirement:
 - (1) Testimony by attorneys,
 - (2) Testimony by subrogation agents,
 - (3) Testimony by plaintiff regarding fault of defendant when damage was to unattended, parked car.
- (d) Hearsay that does not fall within any exception will not support a judgment.
- (e) Other documents substantiating damages claimed must be attached to the

declaration. Evidence must be properly authenticated (by declaration) and brought within hearsay exception if necessary (e.g., certified copy of a public record).

(f) Original documents, or a declaration and order requesting that a copy be used as original, must be submitted for cancellation per California Rules of Court, Rule 234.

(g) Additional requirements for specific types of cases are as follows:

(1) For deficiency judgments (auto sales and leases), Deficiency Memorandum form declarations are provided by the Court (Form No. AC-014) which require further documentation. The Deficiency Memorandum must be supplemented by a Code of Civil Procedure section 585(d) declaration.

(2) If plaintiff is the assignee of a claim, the assignment must be attached.

(3) Collection matters require a copy of the most recent statement and demand sent to defendant prior to filing suit.

(4) Subrogation claims which include personal injury damages require recent medical reports and medical bills, and proof of payment of subrogation claim (e.g. copies of cancelled checks).

(5) Unlawful detainers require the original lease, original proof of service of the required notice, and a copy of the notice served.

(6) All “dba” and “aka” allegations must be proven.

(Effective 5/19/98; Amended 7/1/99; Amended and renumbered from Rule 4.10, 7/1/02)

RULE 4.9 ORDERS TO SHORTEN OR EXTEND TIME

Every application to the Court to shorten or extend the time within which any act may be performed shall be in writing, shall clearly specify the act to be performed, and the reason or reasons supporting the application, and shall be accompanied by a proposed Order for the judge's signature. Every application and order shall clearly state the last calendar day and hour within which the specified act may be performed. *(Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 4.11, 7/1/02)*

RULE 4.10 PREPARATION OF CIVIL ORDERS AND JUDGMENT

Counsel for the prevailing party in a civil action is responsible for the preparation of all orders and judgments, excluding judgments based upon a jury verdict. The Court in its discretion may order the preparing counsel to submit the proposed judgment to opposing counsel for written approval as to form and content. *(Effective 5/19/98; Renumbered from Rule 4.12, 7/1/02)*

RULE 4.11 RECOVERY OF COSTS AND ATTORNEY FEES - JUDGMENT FOR AMOUNT WITHIN SMALL CLAIMS COURT JURISDICTION

LIMITED JURISDICTION CIVIL CASES

It is the policy of the court to deny costs and attorney fees to a prevailing plaintiff when the amount recovered is within the limitation on a small claims court action and the action could have been brought in small claims court, in the absence of unusual circumstances. Where the amount sought is within the jurisdiction of small claims court but the party could not bring the action in that a court, a declaration setting for the specific basis for such a claim and a copy of

the notice required by CCP 1033(b)(2) shall be submitted. (*Effective 5/18/98; Amended 7/1/99; Renumbered from Rule 4.13, 7/1/02*)

RULE 4.12 UNDERTAKINGS

Unless otherwise ordered by the Court, the minimum amount of undertaking required for an order for immediate possession of premises pursuant to California Code of Civil Procedure section 1166a(c) shall be ten (10) times the amount of monthly rental, but not less than \$500.00. (*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 4.14, 7/1/02*)

RULE 4.13 JUDGMENTS PURSUANT TO STIPULATED SETTLEMENT

Where judgment is sought pursuant to a stipulated settlement, or where judgment for the entire unpaid balance of a judgment permitting payment in installments is sought, the party seeking judgment shall proceed by noticed motion. See CCP Section 664.6. (*Effective 5/19/98; Renumbered from 4.15, 7/1/02*)

RULE 4.14 APPLICATIONS FOR STAYS OF EXECUTION OR OTHER EXTRAORDINARY RELIEF

Ex Parte applications are disfavored and will be considered only upon a clear showing by written declaration under CCP Section 2015.5 of each of the following:

1. Opposing counsel (or, if there is none of record, the opposing party) has been notified at least 24 hours in advance by telephone or in person of the time of the application.
2. Specified facts which necessitate proceeding ex parte.
3. Specified facts which constitute good cause for a stay of execution.

Factual matters must be set forth directly, not on information and belief. A form of declaration may be obtained from the clerk.

Stays involving possession of real property will usually be granted only on condition that the payment of the reasonable rental value be paid to the court in advance if rent would otherwise become due.

An ex parte application shall initially be taken to the clerk of the civil division with proof by declaration that opposing party has been served at least 24 hours before hearing. The clerk shall file the ex parte application and present together with the case file to the judge with the next day's calendar.

(*Effective 5/19/98; Renumbered from Rule 4.16, 7/1/02*)

RULE 4.15 SETTLED CASES

If a civil case subject to this Chapter is settled before trial, regardless of the method of settlement, plaintiff must notify the Court and any arbitrator or other court-connected ADR neutral involved in the case, and must timely file a request for dismissal, pursuant to California Rules of Court, Rule 225. (*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 4.17, 7/1/02*)

RULE 4.16 FAILURE TO COMPLY WITH THESE RULES

If, at any time, a party fails to pursue a case to disposition or fails to comply with the requirements of these rules, an order to show cause may be issued by the Court and a hearing

held to determine whether good cause exists for such failure and to consider imposition of sanctions under CCP Section 177.5, or Section 128.5 or dismissal of the action pursuant to CCP Section 583.410 and CRC Section 372.

Written notice of motion supported by a declaration showing good cause will be required to vacate or continue an Order to Show Cause or Status Conference. Such motions must be heard and approved at least five (5) court days prior to the hearing date.

A stipulation by all parties does not constitute good cause. (*Effective 5/19/98; Renumbered from Rule 4.18, 7/1/02*)

RULE 4.17 COURT REPORTER FEES LIMITED JURISDICTION CIVIL CASES

A court reporter will be provided for limited jurisdiction civil trials, both jury and non-jury, only if:

- (a) requested by a party, and
- (b) the requesting party posts one day's fee with the clerk of the court at least ten days prior to the trial date.

If the trial takes one-half day or less, the balance of the posted fee will be refunded. For trials longer than one day, additional fees must be posted before each day's proceeding.

Reporter fees will be shared equally among the requesting parties, and may be recovered as taxable costs at the conclusion of the trial. If no fees are posted, the services of a court reporter will be deemed waived. If a court reporter is waived, no electronic recording or retained reporter may be substituted. (*Effective 5/19/98; Amended 7/1/99; Amended and renumbered from Rule 4.19, 7/1/02*)

See Appendix for exception.

RULE 4.18 EXHIBITS

All exhibits and other materials offered in evidence or otherwise presented at civil trials, including transcripts of depositions and administrative records, will be returned at the conclusion of trial to the custody of the offering party.

Any party may request, at the conclusion of trial and before the exhibits and other materials are returned to the offering party, the court provide certified copies, and the clerk will prepare and provide such copies forthwith at the expense of the requesting party.

In the event of an appeal, exhibits are not to be submitted unless specifically requested by the appellate division. (*Effective 5/19/98; Amended 7/1/99; Renumbered from Rule 4.20, 7/1/02*)